

Prohibited Drug Use and Alcohol Misuse Education and Testing Program Policy for Employees Occupying Non-Safety-Sensitive Positions

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 Replaces: PER 15-1-2 (AEP)

AUTHORITY

Pursuant to King County Code 2.16.036 and 3.12.350, the Director of the Department of Human Resources is responsible for the adoption and administration of the County personnel system. This policy is approved by:



 Director, Department of Human Resources

1/12/2021

 Policy Effective Date

PURPOSE

This policy is intended to promote a safe, healthy, drug-free, and alcohol-free work environment for all King County executive branch employees. It is designed to encourage and support appropriate professional assistance to interested employees with drug and alcohol problems.

Employees who report to work under the influence of alcohol or controlled substances or use alcohol or controlled substances at work are subject to termination.

This policy does not apply to employees taking prescription drugs as directed by their medical providers; however, employees must not take prescription drugs which may endanger or impair the employee's ability to perform the essential functions of their job, including appropriate behavior in the workplace. Should this occur, the employee may be subject to corrective action or other appropriate process.

Per the county's commitment to a drug-free workplace and its obligations under the Drug Free Workplace Act of 1988, the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace and actions will be taken against employees for violations of the prohibition. Adherence to the policy is a condition of employment.

This policy is intended to decrease absenteeism, increase productivity, and prevent accidents and casualties. The policy reflects King County's commitment to safely and efficiently providing the highest quality services to King County residents.

POLICY APPLICABILITY

This policy applies to all employees in the executive branch departments, offices, divisions and agencies, including the Assessor's Office and King County Elections. This includes all career service, provisional, temporary, probationary, and appointed employees that are not identified as safety sensitive.

REFERENCES

United States Drug-Free Workplace Act of 1988

Title 21 United States Code (USC) Controlled Substances Act

King County Prohibited Drug Use and Alcohol Misuse Education and Testing Program Policy Handbook (the Policy Handbook), as amended

DEFINITIONS

"Alcohol Use" means the consumption of any beverage, mixture, or preparation, including any medication containing alcohol.

"Confirmation Test" means, 1) In drug testing, a second analytical procedure performed on a urine specimen to identify and quantify the presence for cocaine metabolites, opiate metabolites, amphetamines, or phencyclidine (PCP) that is independent of the screening test and that uses a different technique and chemical principle from that of the screening test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method for cocaine metabolites, opiate metabolites, amphetamines and phencyclidine; and 2) In alcohol testing, a second test, following a screening test, with a result of 0.02 or greater, which provides quantitative data of alcohol concentration.

"Controlled Substances (drugs)" means the drugs and other substances that are considered controlled substances under the Controlled Substances Act (CSA) and are divided into five schedules. An updated and complete list of the schedules is published annually in Title 21 Code of Federal Regulations (C.F.R.) §§ 1308.11 through 1308.15.

"County" means King County and any other organization that is legally governed by the county with respect to personnel matters.

"Employee Assistance Program (EAP)" means a program provided directly by the county, or through a contracted service provider, to assist employees in dealing with drug or alcohol dependency and other personal problems. Rehabilitation and reentry to the workforce are usually arranged through EAP.

"Non-safety-sensitive position" means all King County executive branch positions that do not require performance of safety-sensitive functions as set forth in the Omnibus Employee Testing Act of 1991, and as provided for in Appendix B of this policy.

"Prohibited Drug Use and Alcohol Misuse Education and Testing Program Policy Handbook" ("the Policy Handbook") means the King County detailed handbook utilized for the purposes of carrying out the provisions of this policy, the regulations issued pursuant to the Omnibus Transportation Employee Testing Act of 1991, and to provide for such additional procedures as may be necessary to ensure King County's compliance with state and federal law affecting drug and alcohol matters.

"Reasonable suspicion" means a King County Official (e.g., a manager, supervisor, or human resources professional) has provided objective, specific, contemporaneous and articulable observations about the employee's appearance, speech, behavior, and odor that may support a conclusion that an employee may be at work under the influence of drugs and/or alcohol.

"Under the influence or impaired" means that an employee is determined to have a confirmed King County alcohol violation (.02 or greater) result; an employee has a verified positive drug test for Cocaine metabolites, Opiate metabolites, Amphetamines, or Phencyclidine (PCP); and/or, based upon reasonable suspicion, an employee is determined to be at work under the influence of a controlled substance(s)."

POLICY

This policy is administered by the program manager for the King County Drug and Alcohol Program ("the Program Manager") in collaboration with the King County Employee Assistance Program. The following activities are prohibited:

- Employees are prohibited from reporting to work or performing work while under the influence or impaired, consuming, using, possessing, selling, purchasing, manufacturing, distributing, or transferring alcoholic beverages (except legal, off-duty alcohol use, not otherwise in violation of this policy) or controlled substances while on duty, on call, on a rest or meal period, or on King County property

- Employees are prohibited from consuming alcoholic beverages or controlled substances while on call.
- Employees are required to submit to an alcohol and/or drug test when directed by King County and prohibited from tampering or attempting to tamper with such alcohol and/or drug test.
- King County drug and alcohol testing procedures incorporates the standards outlined in the federal regulations and are designed to ensure employee confidentiality, the integrity of the testing process, and to safeguard the validity of the test results.
- King County does not conduct pre-employment drug and alcohol testing of applicants for non-safety-sensitive positions.
- King County does not conduct random drug and alcohol tests of employees who occupy non-safety-sensitive positions.
- King County conducts reasonable suspicion drug tests for cocaine metabolites, opiate metabolites, amphetamines, or phencyclidine (PCP) and alcohol tests of employees who occupy non-safety-sensitive positions.
- King County conducts return to duty and follow up drug tests for cocaine metabolites, opiate metabolites, amphetamines, or phencyclidine (PCP) and alcohol tests of employees who occupy non-safety-sensitive positions.
- King County employees involved in drug and alcohol testing of King County employees, must maintain the confidentiality of employee drug and alcohol information. Any employee who violates confidentiality associated with drug and alcohol testing may be subject to discipline up to and including termination of employment.

An employee who violates this policy may be subject to discipline up to and including termination of employment. Application of the provisions of this policy to employees represented by labor organizations will be subject to collective bargaining.

PROCEDURES

Drug and Alcohol Testing

An employee who occupies a non-safety-sensitive position may be required to submit to a reasonable suspicion drug test for cocaine metabolites, opiate metabolites, amphetamines, or phencyclidine (PCP) and/or alcohol test, including post-accident reasonable suspicion testing.

The mere fact that an employee is involved in an accident is not, in and of itself, sufficient to support a reasonable suspicion drug and alcohol test. Instead, King County shall make an individualized assessment of the nature of the accident, including its severity, together with all the relevant, objective, and articulable observations about the employee before, during, and after the accident.

King County may direct any employee occupying a non-safety-sensitive position to submit to drug and alcohol testing if there is reasonable suspicion that the employee has violated this policy.

King County will determine whether reasonable suspicion exists based on objective, specific, contemporaneous and articulable observations about the employee's appearance, speech, behavior, and odor. Objective and articulable observations that may support a conclusion that reasonable suspicion exists include but are not limited to: observations of drug and alcohol possession and use; and physical manifestations of probable drug use and alcohol misuse such as slurred speech, incoherent conversation and interaction, watery and/or bloodshot eyes, unbalanced and/or staggering gait, inappropriately sleeping at work, and the smell of alcohol, or other drugs.

King County shall document in writing all observations supporting its conclusion that reasonable suspicion exists. All documentation supporting a reasonable suspicion test will be submitted to the Program Manager.

If King County directs an employee to submit to a reasonable suspicion drug and alcohol test King County will relieve the employee of duty, arrange for the employee to be transported to the sample collection site, and arrange for the employee to be transported home. The employee will sign any necessary consent forms for obtaining and testing breath and/or urine samples and will provide the samples as directed.

An employee who refuses to sign the necessary consent forms for obtaining and testing breath and/or urine samples, who fails to provide a breath and/or urine sample in a timely fashion, who fails to comply with reasonable direction during the testing process, or who fails to remain at the testing site until the testing process is complete may be subject to discipline up to and including termination of employment.

Any refusal to submit to a reasonable suspicion alcohol or drug test, and all positive alcohol or drug tests, will be reported immediately by the testing facility to the Program Manager. The results of an employee's drug and alcohol test shall be reported to the Program Manager.

Consequences of Non-Compliance

Employees determined to have a verified positive drug test for Cocaine metabolites, Opiate metabolites, Amphetamines, or Phencyclidine (PCP) are considered to be in violation of this policy for prohibited drug use.

Employees determined to have a confirmed King County alcohol violation (.02 or greater) result are considered to be in violation of this policy for alcohol use.

Employees who have a verified positive drug test for Cocaine metabolites, Opiate metabolites, Amphetamines, or Phencyclidine (PCP), or who have a confirmed King County alcohol violation (.02 or greater) result will be immediately removed from duty and, subject to appropriate approvals, may be placed on administrative leave with pay pending review.

Circumstances that warrant termination of employment include but are not limited to:

- An employee uses, possesses, sells, purchases, manufactures, distributes, or transfers drugs or alcoholic beverages while on duty, on call, or on a rest or meal period (except legal, off-duty alcohol use, not otherwise in violation of this policy, at public events on King County property is allowed).
- An employee consumes alcohol within eight (8) hours following an accident or until the employee takes a post-accident alcohol and/or drug test, whichever occurs first. The decision to test an employee will be made prior to the employee being released from work or from medical care.
- An employee refuses to submit to an alcohol and/or drug test when directed by King County; or, tampers or attempts to tamper with an alcohol and/or drug test.
- An employee does not notify their supervisor, within five (5) calendar days of any conviction, that they have been convicted of a drug crime occurring in the workplace.
- An employee has a verified positive drug test for cocaine metabolites, opiate metabolites, amphetamines, or phencyclidine (PCP), is under the influence or impaired at work, or a confirmed positive King County alcohol violation (.02 or greater) and was involved in an accident resulting in death, serious injury or extensive property damage.
- An employee has a verified positive drug test for cocaine metabolites, opiate metabolites, amphetamines, or phencyclidine (PCP), is under the influence or impaired at work, or a confirmed positive King County alcohol violation (.02 or greater) and is also being terminated for other misconduct which could independently result in their discharge.
- An employee has a verified positive drug test for cocaine metabolites, opiate metabolites, amphetamines, or phencyclidine (PCP), is under the influence or impaired at work, or a confirmed positive King County alcohol violation (.02 or greater) and has not completed their initial probationary period following hire into their first King County position.

- An employee does not appear immediately and complete a follow-up drug and/or alcohol test following notification to appear for such tests.
- An employee has a second confirmed positive drug test result or King County alcohol violation (.02 or greater) result.
- An employee has a verified positive drug test for cocaine metabolites, opiate metabolites, amphetamines, or phencyclidine (PCP) or a confirmed positive King County alcohol violation (.02 or greater) and is not eligible or chooses not to enter into a *Conditional Retention of Employment Agreement*.

Conditional Retention of Employment

It is King County's policy that current employees who have a verified positive drug test for cocaine metabolites, opiate metabolites, amphetamines, or phencyclidine (PCP) or an alcohol test or King County alcohol violation (.02 or greater) and are not subject to the terms above will be offered conditional retention of employment if the employee:

- Submits to an evaluation by a substance abuse professional approved by the EAP;
- Signs a conditional retention of employment agreement;
- Attends an appropriate King County approved education and/or treatment program and signs a monitoring agreement with the county's EAP to ensure successful completion of the education/treatment program specified by the substance abuse professional;
- Prior to returning to work, is subject to a return to duty drug and/or alcohol test with a verified negative result(s); attends follow up tests as required by the substance abuse professional;
- The employee who is conditionally retained must fully comply with the conditions of retention of employment, including successful completion of the treatment program specified by the substance abuse professional; and
- The employee who is conditionally retained will be suspended for one week without pay.

Consequences for being under the influence or impaired with controlled substances for which the county does not perform confirmation tests, at work, include referral to the EAP, who will verify through a medical provider that use, excessive use or misuse of controlled substances is the cause and are not subject to the terms above, will be offered conditional retention of employment.

The drug testing or other measures associated with the *Conditional Retention of Employment Agreement* will be determined by the EAP. Conditional retention only applies to the first occurrence.

It is King County's policy that current employees, who have previously entered into a *Conditional Retention of Employment Agreement*, who report to work under the influence of controlled substances for which the county does not perform confirmation tests, are in violation of this policy and shall be disciplined up to and including termination.

RESPONSIBILITIES

King County employees shall:

- Comply with all provisions of this policy;
- Not engage in unacceptable workplace behavior or substandard performance caused by substance abuse and alcohol misuse; and
- Notify their supervisor, within five (5) calendar days of any conviction, that they have been convicted of a drug crime occurring in the workplace.

Supervisors shall:

- Ensure compliance with the provisions of this policy;

- Contact the Program Manager regarding reasonable suspicion and for authorization and coordination of testing;
- Direct an employee occupying a non-safety-sensitive position to submit to drug and alcohol testing if there is reasonable suspicion that the employee has violated this policy;
- Implement appropriate disciplinary action after a determination is made that an employee violated this policy; and
- Upon being notified that an employee was convicted of a criminal violation occurring in the workplace involving drugs, the supervisor will immediately inform the respective department director, the Program Manager, and the Department of Human Resources (DHR) Director. If the employee performs duties associated with the provisions of a contract or grant received directly from a federal agency, including block grants or entitlement grants, the department director is required to notify the appropriate federal agency of the conviction within ten days of the employee's notification.

The DHR Director or designee shall:

- Providing consultation and advice to King County agencies and departments regarding the implementation of this policy;
- Drafting and signing Conditional Retention of Employment Agreements, in consultation with the Program Manager and EAP staff, for non-represented employees; and
- Overseeing EAP drug and/or alcohol counseling, referral, monitoring, and other activities associated with this policy.

The Employee Assistance Program shall:

- Provide county employees covered by this policy with information regarding drug and/or substance abuse, including contact information for professional counseling and treatment programs, and referrals to a certified substance abuse professional; and
- In cases where the county EAP representative is also a certified substance abuse professional, the EAP representative may serve as the substance abuse professional under the employee's *Conditional Retention of Employment Agreement*, administer the employee's monitoring agreement, and maintain confidential medical records associated with the monitoring agreement.

The Office of Labor Relations shall negotiate, draft, and sign *Conditional Retention of Employment Agreements* with the Program Manager and EAP staff, for represented employees.

The Program Manager shall administer the King County Drug and Alcohol Program including, but not limited to, the authorization and coordination of reasonable suspicion testing.

QUESTIONS

Refer questions or comments to your agency's [Human Resources Manager](#) or the Department of Human Resources.